

ORIGINIAL
FILED
March 24 2010

Ed Smith
CLERK OF THE SUPREME COURT
STATE OF MONTANA

Robert James Thomas DCC # 2067081
Alpha House Pre-Release Center
3109 N. 1st Ave
Billings, MT 59101
PRO SE APPELLANT

FILED

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CLERK OF THE SUPREME COURT
STATE OF MONTANA

IN THE SUPREME COURT OF THE STATE OF MONTANA

Supreme Court Cause No DACI-0674

ROBERT JAMES THOMAS

Appellant,

VS.

STATE OF MONTANA

Appellee

RESUBMITTED PETITION
FOR APPOINTMENT OF COUNSEL
AND EXTENSION OF TIME TO
FILE OPENING BRIEF

COMES NOW pro se appellant Robert Thomas to depose
and say under penalty of perjury and false swearing:

I filed Notice of Appeal and for Appointment of Counsel on
December 17th 2009. On January 27th 2010, the District Court's record
was filed with the Supreme Court and the 30 day period to provide
an opening brief began. On February 22nd 2010, I sent a resubmitted
request for Counsel since the original petition went unanswered. On
March 15th 2010, I called the Clerk of Court for status on the 2nd
request for counsel since I had not heard back. I was informed
that two weeks prior, my request for counsel had been denied.

The reasons for denial were read to me over the phone and even as I write this, I still have not seen the order. The Clerk of Court said the denial was sent to my previous address at Dawson County Correctional Facility in Glendive, Montana. It has yet to be forwarded to my current address at Alpha House Pre-Release Center in Billings, Montana.

It appears the denial was based on my insufficient demonstration of "extraordinary circumstances" defined under § 16-8-104(5), MCA, which reads in pertinent part:

- (3) As used in this section, "extraordinary circumstances" includes those in which the petitioner or appellant does not have access to legal materials ...

My nearly complete lack of legal materials & resources is the extraordinary circumstance I shall focus on. It was the first item in support of counsel in the PETITION FOR APPOINTMENT OF COUNSEL AND EXTENSION OF TIME TO FILE OPENING BRIEF dated February 22nd 2010. Perhaps my insufficient specificity warranted the denial. I know that my transfer to a community-based facility would seem to open access to legal materials but be assured that is not the case. I must try again for counsel since not having such to help navigate a probable claim of innocence is sheer sacrifice.

1. My placement at Alpha House Pre-Release Center has barred meaningful access to legal resources, materials, and time needed to present to this Court an opening brief. The specifics follow:

- a. Alpha House Pre Release is not considered a jail/prison therefore is not regulated to and does not maintain any semblance to a law library. No Montana Code Annotated books, no case law, no general law materials are available here.
- b. Alpha House Pre Release does not have any in-house access to the Internet, word processing, or even a typewriter.
- c. The public library allows only 1 hour of computer use per day. My full-time, Monday thru Friday Employment from 6:30am to 6:15pm (transportation, a bike, is included) allows access to the library only on the weekends. That results in only two hours of any legal research per week, greatly insufficient considering my lack of legal experience and complexity of my actual innocence claim.
- d. The public library charges 10¢ per page to print. Even short Court opinions and briefs can become very expensive fast and for me, an indigent appellant nearly \$800⁰⁰ in the hole, this option is prohibitive.
- E. My Employer prevents personal calls, including the State's Law Library. And even if I could call, the excruciating complexity of an actual innocence claim makes research over the phone moot.

- f. Alpha House Pre Release policy prevents taking time off work for anything other than sickness or mandatory treatment or appointments. Even if I could take the time off, the complicated argument of actual innocence warrants, at least, two full weeks of continuous and uninhibited research which is not possible.
- g. I'm nearly \$8000 in the red to Alpha House so any request to take time off work would be laughed at. My employer also would not entertain the request.
- h. My level of community freedom at Alpha House Pre Release is limited to only eight hours per week, further restricted by only two hours at any public location, e.g. library.
- i. I have zero funds or security to obtain counsel as demonstrated in this case's PETITION TO PROCEED WITHOUT PREPAYMENT OF COURT COSTS. In fact, I'm deeper in debt since that was submitted.
- j. My only experience with law research is by using WestLaw computer software which only provided Court opinions. This is no longer available because of my transfer from Dawson County Correctional Facility (Copies are 20¢ per page there!) to Alpha House Pre Release Center.
- k. An attorney is the only person who can provide specific instructions and guidance regarding the issues which need presented to this Court. I simply have no idea even where to begin.

Considering the above, my preparation of an opening brief for this Honorable Court is an insurmountable challenge. And like an infomercial, there's more:

2. I am a petitioner of post-conviction relief based on newly discovered and credible evidence that, when proved and viewed in light of the evidence as a whole, will conclusively establish my actual innocence of felony criminal endangerment which is my only incriminating crime.
3. I represent my wrongful conviction is a fundamental miscarriage of justice as defined by State v. Rederow, 1999 MT 95, ¶ 33, 294 Mont. 252, ¶ 33, 980 P.2d 622, ¶ 33. The authority to grant counsel on these grounds can be found at § 46-8-104(1)(e).
4. I represent to this Honorable Court that I am currently restrained of my liberty at Alpha House Re-Release Center in Billings, Montana. My transfer has prohibited meaningful access to legal materials and resources. Even if I had access, I lack the training to successfully present an argument and defend against the efforts of the state.
5. I represent that appointment of counsel is in the interest of justice - punish the guilty but, in this case to free the innocent. Appointment on these grounds is authorized by § 46-8-104(2) and § 46-21-201(2).

6. I rely on the following Montana Supreme Court case law in support of this re-submitted petition for counsel:
Swearinger v. State, 2001 MT 10, 304 Mont. 97, 18 P.3d 998; see also *Ronan v. State*, 1998 MT 95, 288 Mont. 391, 958 P.2d 670; *Wells v. State*, 2001 MT 1523, 305 Mont. 535; 27 P.3d 440.
7. Without the assistance of counsel, I cannot provide citations, supporting case law, relevant legislation enactments. Additionally, due process cannot be guaranteed.

I am deep in debt, under-educated, restrained of my liberty, barred from meaningful access to legal materials, and innocent of the allegations of criminal endangerment which I can prove.

Between full-time employment, mandatory treatment classes, mandatory A.A. attendance, Alpha House chores, filling out budgets and schedules and reports, I'm barely getting six hours of sleep per night. With my low level of community access, the public and city law library hours and policies, the price per page to print case law, etc. I simply cannot fulfill this Court's request for an opening brief by April 1st 2010. In fact, it has taken me six days just to complete this petition and that was based on old note that thankfully I kept.

I sit here staring at a legion of evidence that will prove my actual innocence but I cannot properly or effectively present such without the indisposseble assistance of legal counsel.

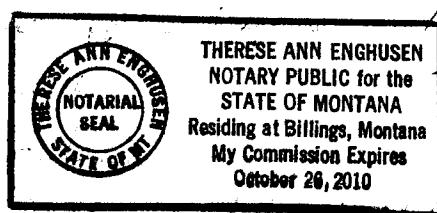
Ladies and gentlemen of the Supreme Court, I implore the assignment of counsel so I can prove actual innocence. I can guarantee that such assignment will not be in vain.

My claim of actual innocence is no joke or attempt to burden the Courts. In support, I point to the 50+ page memorandum that took me almost five months of full-time research and over 150 pages of notes just to complete! Also in four months, I will flat discharge my sentence. This should be convincing that my claim has merit. Why else would I go through such pain?

Please seriously consider that I did not learn of the March 3rd 2010 denial of counsel until nearly 2 weeks after it was issued. Also, please seriously take into consideration the above extraordinary circumstances. Everything stated here can be verified by calling Alpha House at (406) 259-2109 and Parmitly Library at (406) 657-8258.

I, Robert James Thomas, do certify that I know of the foregoing statements and state under penalty of perjury and false swearing that they are true, accurate, and correct to the best of my knowledge.

Dated this 22nd day of March, 2010



Robert J. Thomas
ROBERT J. THOMAS

CERTIFICATE OF SERVICE

I certify that the foregoing RESUBMITTED PETITION FOR APPOINTMENT OF COUNSEL AND EXTENSION OF TIME TO FILE OPENING BRIEF, was deposited in the U.S. Mail, postage pre-paid to the following party:

Montana State Attorney General
PO Box 201401
Helena, MT 59620-1401

Dated this 22nd day of March, 2010.

Robert J. Thomas
ROBERT JAMES THOMAS
DOC # 20067081
Alpha House Pre Release
3109 N. 1st Ave
Billings, MT 59101